



FORM-A

**IN THE COURT OF ADDL.SR.CIVIL JUDGE AND ADDL.CHIEF JUDICIAL
MAGISTRATE ,AT CHIKHLI
EX-37**

DATE OF JUDGEMENT:-30-06-2026

CASE NO:-2438/2022.

DETAILS OF FIR/CRIME AND POLICE STATION

Chikhli Po.St.I CR No.11822004220117

Offence Punishable U/S 381 and 114 of Indian Penal Code

Complainant	The state of Gujarat
Represented by	Ld.App Mr.Y.R.Patel
Accused	Jigneshkumar Niteshbhai Dho.Patel Age:24,Occupation:Service Res.Rumla,Behind Bardipada Dairy,Ta.Chikhli,Dist-Navsari
Represented by	Ld.Advocate, Mr.Y.P.Bhatt

FORM-B

Date of Offence	08-02-2022
Date of FIR	22-02-2022
Date of Chargesheet	10-10-2022
Date of frmaing of Charges	07-11-2019
Date of commencement of evidence	20-01-2023
Date on which judghement is reserved	02-06-2026
Date of Judegement	30-06-2026
Date of the sentencing Order IF,any	-----

Accused Details

Rank of the accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of section 428, Cr, P C
1	Jigneshkumar Niteshbhai Dho.Patel	23-02-22	23-02-22	381 and 114	Aquitted	-----	

FORM-C

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A.Prosecution

Rank	Exh.	Name	Nature of evidence Eye witnesses, Police witnesses, Expert witnesses, Medical witnesses, Panch Witnesses, Other witnesses
PW-1	4 & 21	Navinbhai Dhirubhai Pawar	Panch
PW-2	6 & 23	Dhaneshbhai @ Dhansukhbhai Ganubhai Padvi	Panch
PW-3	9	Ashishkumar Jayrambhai Patel	Witness
PW-4	10	Dhirubhai Somlubhai Ku.Patel	Witness
PW-5	29	Sureshbhai Madarbhai	PSO
PW-6	32	Shakuntala Salubhai Mal	Investigative officer

B.Defence witnesses, If any

Rank	Name	Nature of evidence Eye witnesses, Police witnesses, Expert witnesses, Medical witnesses, Panch witnesses, Other witnesses
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C.Court witnesses,If any

Rank	Name	Nature of evidence Eye witnesses, Police witnesses,Expert witnesses,Medical witnesses,Panch witnesses,Other witnesses
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LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS**A.Prosecution:-**

Sr no.	Exhibit No.	Description
1	5 & 22	Panchnama of scene of crime
2	30	FIR

B.Defence:-

Sr no.	Exhibit No.	Description
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C.Court Exhibits:-

Sr no.	Exhibit No.	Description
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D.Material Objects:-

Sr no.	Material No.	Object	Description
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-.JUDGMENT:-

(1). Brief facts of the prosecution case:

Briefly stated, the case of the prosecution is that the accused, in connivance with the co-accused and in furtherance of their common intention, had rendered the CCTV cameras installed at the SR Petrol Pump, Rumla, non-functional for the preceding fifteen days. Thereafter, on 08.02.2022, while they were on night duty, between 12:00 midnight and 3:00 a.m., they inserted the pipe of an electrically operated motor through the dip-measuring pipe of the diesel storage tank of SR Petrol Pump and dishonestly siphoned off 1,120 litres of diesel valued at ₹1,00,500/- from the said tank. Thus, the accused persons, acting in concert and aiding each other, committed an offence punishable under Sections 381 and 114 of the Indian Penal Code within the territorial jurisdiction of this Hon'ble Court. Pursuant to the registration of the complaint, the Investigating Officer apprehended the accused persons and, upon completion of the investigation, submitted a charge-sheet under Section 173 of the Code of Criminal Procedure before the Court having jurisdiction for taking cognizance of the offence and proceeding further in accordance with law.

(2). Cognizance of offence:

After filing of chargesheet against the accused person my Learned Predecessor has pleased to take cognizance of alleged offence against the accused and have issued the process against him. After service of process upon accused he has appeared before this Court. Thereafter as provided under Sec.207 of Cr.P.C the copies of chargesheet has been supplied to him free of costs. Thereafter, considering the materials on record my learned predecessor has framed the charges against the accused person for the alleged offence under Sec.240 of Cr.P.C. vide Exh.03 and plea of accused has recorded at Exh.04. Wherein accused has denied to plead guilty and have claimed trial. Therefore, trial of this case has been commenced against the accused.

(3). Further statement of accused:

To prove it's case, prosecution has produced oral as well as documentary

evidence, which are mentioned in Form C. Thereafter, after considering the oral submissions of Learned A.P.P evidence of prosecution side was closed. Thereafter as contemplated under Sec.313 of Cr.P.C, further statement of accused has been recorded. Wherein he has stated that he is innocent and complainant has instigated him and lodged false complaint.

(4). **Fact in issue:**

Considering the evidence on record as well as legal provisions to adjudicate present case following issues are arisen for my determination.

ISSUE

1. Where prosecution beyond reasonable doubt proves that accused in connivance with the co-accused and in furtherance of their common intention, had rendered the CCTV cameras installed at the SR Petrol Pump, Rumla, non-functional for the preceding fifteen days. Thereafter, on 08.02.2022, while they were on night duty, between 12:00 midnight and 3:00 a.m., they inserted the pipe of an electrically operated motor through the dip-measuring pipe of the diesel storage tank of SR Petrol Pump and dishonestly siphoned off 1,120 litres of diesel valued at ₹1,00,500/- from the said tank. Thus, the accused persons, acting in concert and aiding each other, committed an offence punishable under Sections 381 and 114 of the Indian Penal Code within the territorial jurisdiction of this Hon'ble Court?

2. What order?

(5). For the reasons stated below, my answer the above issues are as under;

(1). In Negative.

(2). As per final order.

(6). **Reasons for conclusion & evaluation of evidence:**

6.1. **Issue No.1.**

Learned APP has argued that the prosecution has successfully proved its case through the oral evidence of the witnesses examined during the course of trial as well as through the documentary evidence produced on record. It is, therefore, submitted that the accused persons are liable to be convicted and punished in accordance with law.

On the other hand, the learned advocate appearing for the accused has contended that all the panch witnesses and independent witnesses examined by the prosecution have not supported the prosecution case and have been declared hostile. It is further submitted that the complainant in the present case could not be traced and, therefore, has not been examined by the prosecution. Hence, it is argued that merely on the basis of the testimony of the Investigating Officer, the accused persons cannot be convicted and sentenced.

6.2 Before dealing with the evidence on record, this Court is inclined to reproduce the relevant provision of law.

Indian Penal Code-

381. Theft by clerk or servant of property in possession of master.—Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Indian evidence Act,

114. Court may presume existence of certain facts.The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.**Illustrations**The Court may presume -
(a) that a man, who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession ;(b) that an accomplice is unworthy of credit, unless he is corroborated

in material particulars ;(c)that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration ;(d)that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence ;(e)that the judicial and official acts have been regularly performed ;(f)that the common course of business has been followed in particular cases ;(g)that evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it ;(h)that if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him ;(i)that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged. But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it-As to Illustration (a) - A shopkeeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business :As to Illustration (b) - A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself. As to Illustration (b) - A crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable ;As to Illustration (c) - A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence :As to Illustration (d) - It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course :As to Illustration (e) - A judicial act, the regularity of which is in question, was performed under exceptional circumstances ;As to Illustration (f) - The question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances :As to Illustration (g) - A man refuses to produce a document which

would bear on a contract of small importance on which he sued, but which might also injure the feelings and reputation of his family ;As to Illustration (h) - A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked :As to Illustration (i) - A bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

6.3 In light of the aforesaid legal provisions, the evidence available on record in the present case has been carefully considered. In the present case, the prosecution has not examined the original complainant as a witness, as he was not available. However, the Police Station Officer (PSO) who recorded the complaint has been examined at Exh. 29. The said witness, Shri Sureshbhai Madharbhai Patel, has deposed in his examination-in-chief that at the relevant time he was serving as an Assistant Sub-Inspector at Khergam Police Station. He has further stated that upon receipt of information regarding the theft incident that had occurred on 08.02.2022, he registered the complaint and thereafter entrusted the investigation to PSI S.S.Mal. He has identified the complaint bearing his signature, which has been produced and exhibited in the present case at Ex-30. However, during his cross-examination, the said witness admitted that the alleged incident had occurred on 08.02.2022, whereas the complaint came to be lodged belatedly on 22.02.2022. Thus, the testimony of the said witness is relevant only to the extent of proving the registration of the complaint. His evidence does not advance the prosecution case regarding the occurrence of the incident, as he was neither an eyewitness to the alleged offence nor had he conducted any investigation in connection therewith. Consequently, his testimony has limited evidentiary value with regard to establishing the guilt of the accused.

6.4 Further, the prosecution has examined panch witness Shri Navinbhai Dhirubhai Pawar at Exh. 21 and panch witness Dhanesh Ganubhai Padvi at Exh. 23. The panchnama of the place of occurrence has been produced and exhibited at Exh. 22. Both the aforesaid panch witnesses, however, did not support the case of the

prosecution in their examination-in-chief. Consequently, the learned Assistant Public Prosecutor sought and obtained permission from the Court to treat them as hostile witnesses and subjected them to detailed cross-examination. Despite such cross-examination, neither of the said witnesses supported the prosecution case or admitted the contents of the panchnama. In these circumstances, the execution and contents of the panchnama cannot be said to have been duly proved through the testimony of the said panch witnesses, and their evidence does not lend support to the prosecution version.

6.5 Further, the prosecution has examined Shri Ashish Kumar Jayrambhai Patel at Exh. 9 and Shri Dhirubhai Somalubhai Patel at Exh. 10 as witnesses in the present case. However, both the said witnesses did not support the prosecution case in their examination-in-chief. Consequently, the learned Assistant Public Prosecutor sought permission of the Court to declare them hostile and, upon such permission being granted, subjected them to detailed cross-examination. Despite the extensive cross-examination conducted by the prosecution, neither of the said witnesses supported the prosecution version. Their testimony does not establish the allegation that the accused persons had committed the theft in question. Therefore, no incriminating evidence against the accused can be said to have emerged from the testimony of the aforesaid witnesses, and their evidence does not advance the case of the prosecution.

6.6 Lastly, the prosecution has examined the Investigating Officer, Ms.Shankuntla Salubhai Mal, at Exh. 32. In her examination-in-chief, she has deposed that at the relevant time she was serving as a Police Sub-Inspector at Khergam Police Station. She has further stated that after registration of the offence in question, the investigation was entrusted to her, whereupon she recorded the statements of the concerned witnesses and carried out the investigation. However, from her cross-examination, it clearly emerges that although the alleged incident had occurred fourteen days prior to the lodging of the complaint, the complaint came to be filed after considerable delay. She has also admitted that she did not record any detailed

supplementary statement of the complainant explaining such delay. It further transpires from her evidence that during the course of investigation no stolen property was recovered or seized from the possession of any of the accused persons. Moreover, no recovery panchnama in respect of the alleged muddamal was drawn or proved on record. In the aforesaid circumstances, the evidence of the Investigating Officer remains uncorroborated by any independent or reliable evidence. It is a settled principle of criminal jurisprudence that conviction cannot ordinarily be based solely upon the uncorroborated testimony of the Investigating Officer when the material witnesses have not supported the prosecution case and no recovery or other incriminating circumstance has been established. Therefore, this Court is of the considered opinion that merely on the basis of the unsupported testimony of the Investigating Officer, the accused persons cannot be held guilty of the offence alleged against them.

7. Upon an overall appreciation, analysis and scrutiny of the evidence adduced on record, this Court is of the considered opinion that the prosecution has failed to establish the charge levelled against the accused beyond reasonable doubt through the oral and documentary evidence produced before the Court. Furthermore, as no stolen property or muddamal has been recovered or seized from the possession of the accused, no presumption under Section 114 of the Indian Evidence Act can be drawn against them. In the absence of cogent, reliable and convincing evidence connecting the accused with the alleged offence, the prosecution case remains unproved. Accordingly, for want of sufficient evidence, this Court answers Point No. 1 in the negative. In view of the aforesaid findings and for the purpose of answering Point No. 2, the following order is passed:

ORDER

1. The accused Jigneshkumar Niteshbhai Dho. Patel Res. Rumla, Behind Bardipada Dairy, Ta. Chikhli, Dist-Navsari is hereby acquitted u/s 248(1) of code of criminal procedure for the offence punishable u/s 381 and 114 of Indian penal code by extending the benefit of doubt.

2. In compliance with Section 437A of the Code of Criminal Procedure, the accused shall execute a personal bond in the sum of Rs. 25,000/- (Rupees Twenty-Five Thousand only) with one surety of the like amount to appear before the appellate court as and when called upon to do so.
3. Proceedings be consigned to the Record Room after due compliance.

Place: Chikhli.
Date: 30.06.2026.

Sunilkumar Pranshankar Dave
Addl. Chief Judicial Magistrate, Chikhli.
GJ01390.